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THE TRANSFORMATION OF INTERNATIONAL ENVIRONMENTAL LAW

Yann Kerbrat and Sandrine Maljean-Dubois (eds)

Pedone & Hart Publishing, 2011, 338pp, ISBN 9781849462594, £42.00

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2012 is the fortieth anniversary of the Stockholm Conference on the Human Environment, a seminal event which marked the first time that the international community had addressed the environment as an international issue in a serious way. Back in 1972, the Conference called upon 'Governments and peoples to exert common efforts for the preservation and improvement of the human environment, for the benefit of all the people and for their posterity'. Since that time, we have witnessed a proliferation of treaties addressing environmental issues of various kinds. There are also an increasing number of judicial decisions which touch upon environmental protection. It is therefore an appropriate occasion to review the development of international environmental law. This collection of essays is the outcome of an international symposium organised by the French Society for International Law in June 2009. It contains contributions from a number of highly respected academics on the current state of international environmental law.

One of the objectives of the book is to 'show how environmental challenges shake or transform the core categories and concepts of international law'. International environmental law itself is characterised as an example of a new variety of international law which is not solely concerned with the legal relations between states, but rather with the protection of common interests. This shift in the normative framework of international law is, according to Sandrine Maljean-Dubois, one of the book's editors, 'a real revolution in terms of technique, procedures and legal concepts'.

The first part of this collection of essays addresses the variability of sources of international environmental law. It makes some inter-

esting observations about the use of binding and non-binding instruments in this field, particularly the extensive use of so-called 'soft law', which is highlighted in several chapters. Whilst the contributors tend to see this phenomenon as a largely positive trend, it is also recognised that problems arise. As Maurice Kamto notes in his contribution, 'the classical distinction between treaties and non-conventional and non-binding instruments does not have the same operational strength here as in other fields of international law. The boundary between law and non-law is neither watertight nor with radical, legal effect'. The inherent uncertainty concerning the status of many international environmental norms is a question that is considered by several authors, although no clear solutions are proposed.

As well as dealing with the types of instrument used in international environmental law, the book also considers the law-making process. In many cases, it is the conferences of the parties to a treaty which drive the evolution of international environmental law. Peter Sand addresses this 'innovative instrument of international environmental governance' in his chapter on the role of environmental agreements' conferences of the parties. He concludes that these institutions are at the forefront of innovation in international environmental law and they offer 'a kind of quasi-legislative normativity'.

Part two of this volume is dedicated to the enforcement of international environmental law. In his contribution, Tullio Treves recalls the developments in international environmental law achieved through the decisions of courts and tribunals. Treves also notes that many international environmental regimes shy away from adjudication as a method of dispute settlement, instead favouring compliance procedures. Yet, he raises questions about the ability of such compliance procedures to protect the rights of the participants in the process. Other authors also address possible shortcomings of compliance procedures. Sand notes that even the relatively successful compliance procedure adopted under the Convention on International Trade in Endangered Species reveals an imbalance in the hesitation of states to recommend collective sanctions against some of the more powerful states involved in the regime. Anne-Sophie Tabau also considers possible improvements in the Kyoto Protocol's compliance procedure.

Some of the most interesting essays in this collection address the role of science in international environmental law. Most environmental

treaties establish some sort of scientific and technical advisory body. An example is given by Makane Moïse Mbengue who analyses the mandate of the Intergovernmental Panel on Climate Change (IPPC) and its importance in the international climate change regime. It is clear from this analysis that the IPPC is not as effective as it could be, but it nevertheless 'a unique, pioneer and efficient model of expertise at the international level' which can be used as a basis for international scientific cooperation in other areas such as the conservation and sustainable use of biodiversity or the protection of the marine environment.

Science also plays an important part in the enforcement of environmental law. This is a developing area of law and problems can arise in practice as shown by the judgment of the International Court of Justice in the 2010 *Pulp Mills* case where the Court was critical of the way in which scientific evidence had been presented. Eve Truilhé considers what lessons can be learnt about the role of scientific expertise in international disputes from the World Trade Organization. Yet, even in that context, she reveals that some challenges remain.

Reviewing the scope of the papers in the book, the editors conclude there is still a long way to go in the development of an effective system of international environmental law. A particular challenge is fragmentation of the law. Several contributions reflect on the treatment of environmental issues in other areas of international law, including trade law, investment law, and humanitarian law. Laurence Boisson de Chazournes also notes the potential for tension between environmental regimes (e.g. climate change and biodiversity). Yet, the papers seem to point to an *ad hoc* approach to these issues, rather than the imposition of some sort of hierarchical ordering.

At one stage, the editors pose the question: 'Will the gravity of the environmental crisis provide us with a "constitutional moment" favorable for a new evolution, or a new qualitative leap?' No clear answer is given to this question. What is clear is that the transformation of international environmental law is ongoing and such a new qualitative leap cannot be ruled out.

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